

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0178P

Income Tax

Calendar Years 1999 & 2000

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late payment penalty, and, penalty on underpayment of estimated tax.

STATEMENT OF FACTS

The taxpayer was assessed penalty as a result of a Department audit conducted for the calendar years 1999 and 2000.

The taxpayer is a large hair care franchiser. The taxpayer has 55 locations in Indiana. The taxpayer is domiciled out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of an inadvertent misclassification of income at the low rate instead of the proper high rate for gross income tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions

provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.

TB/RAW/JMS—031206